



All Citations

192 Cal.App.4th 289, 121 Cal.Rptr.3d 172, 11 Cal. Daily Op. Serv. 1351, 2011 Daily Journal D.A.R. 1655, 52 Communications Reg. (P&F) 527

RECEIVED

FEB 20 2020

Planning Board
Grafton, MA

Footnotes

- 1 The City of Palmdale and its agencies are referred to as the City.
- 2 City Zoning Ordinance section 95.03 B.1. ("Maximum height of the active element shall be thirty (30) feet or less....")
- 3 The American Radio League, Incorporated (League), a self-described educational and scientific organization that is the "principal representative and advocate for the more than 650,000 federally licensed Amateur Radio operators in the United States," filed an amicus curiae brief on Zubarau's behalf. The League defines an "antenna array" as an "interactive grouping of multiple antennas, or, less frequently, a single antenna with multiple components, such as a horizontal (or vertical) directional parasitic array of antenna elements referred to as a 'Yagi' type antenna, typically and normally found in urban, suburban and rural residential neighborhoods throughout the United States." The League states that, "in the parlance of radio antenna technology, an active element is the portion of the antenna to which radio frequency energy is applied through a transmission feedline from a radio transmitter, and/or which is connected by that transmission feedline to a radio receiver." Another authority states, "When antenna radiators are arranged in a precision array, an increase in gain occurs. An array might be a series of dipole elements, as in the broadside array ... or a series of slots, horns, or other radiators.... [¶] The active element contains, in addition to a phase shifter, a transmit power amplifier ... and a low noise amplifier for receiving." (Carr, Practical Antenna Handbook (4th ed. 2001) 409, 411.)
- 4 The notice misidentified this SFMM as SFMM 05-134.
- 5 City Zoning Ordinance section 95.03 A ("Purpose and intent"), provides, "It is the purpose of these regulations to provide standards for residential vertical television or amateur radio antennae that will ensure that such antennae are compatible with the surrounding neighborhood by preventing adverse visual, health, safety, and other impacts on the surrounding properties and/or the community."
- 6 City Zoning Code Ordinance section 95.03 B, "Development standards for residential zones," provides:
 "The installation of residential single-pole or tower, roof or ground mounted, television or amateur radio antennae may be permitted in all agricultural and residential zones in accordance with the following:
 "1. Height. Maximum height of the antennae shall not exceed seventy-five (75) feet measured from the grade to the highest point of the antenna. Maximum height of the active element of the antenna array shall be thirty (30) feet or less except as otherwise regulated by FAA or FCC.
 "2. Setbacks. The following setbacks shall be required measured from the closest point of the structure to the property line:
 "a. Minimum rear yard setback shall be ten (10) feet;
 "b. Minimum interior side yard setback shall be ten (10) feet;
 "c. Minimum street side yard setback shall be fifteen (15) feet;
 "d. No vertical antenna shall be located within the front yard.
 "3. Interferences. The operation of the antenna shall not cause interference with any electrical equipment in the surrounding neighborhoods (e.g. television, radio, telephone, computer, etc.), unless exempted by Federal regulation."
- 7 Government Code section 65850.3 concerns the regulation of "amateur radio service communication." The section is quoted in full in Section II B. *post*.
- 8 Moreover, contrary to the trial court's finding, Zubarau's second cause of action is not moot. Zubarau brought a cause of action challenging the facial validity of part of City Zoning Ordinance section 95.03, which cause of action Zubarau

did not abandon. (See ^A *Breaux v. Agricultural Labor Relations Bd.* (1990) 217 Cal.App.3d 730, 743, 265 Cal.Rptr. 904 ["While issues which may someday be, but are not yet, justiciable are sometimes said not to be 'ripe,' issues which have been, but (by virtue of intervening acts or events) are no longer, justiciable may be said to be 'moot' ".])

9 Section 1021.5 provides, in relevant part, "Upon motion, a court may award attorneys' fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

10 In his appeal, Zubarau does not address the trial court's denial of attorney fees pursuant to Government Code section 800.
1 Defendant's additional discussion is as follows: "However, the use of the term 'height' in Sections 95.03 and 95.04 of the City's Zoning Ordinance consistently refers to distances measured from the ground to the highest point of the particular type of antenna. (See AR Vol. 5, pp. 1227–1228.) Generally, when the term 'height' is used to refer to the distance from the bottom to the top of something, the measurement begins as a fixed point such as the ground. (See the Merriam–Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/height?show=0&t=1294677547> [Example provided: 'These bushes grow to heights of up to five feet.'].) [¶] Furthermore, the City's Zoning Ordinance specifies that 'the maximum height of the active element of the antenna array shall be thirty (30) feet or less except as otherwise regulated by FAA or FCC.' (AR Vol. 5, p. 1227.) Federal Communication Commission ('FCC') regulations pertaining to 'height' generally refer to the size of antennas measured from the ground or other surface (such as a roof) to the tip of the antenna, not the relative size of a particular element. (See PRB–1, AR Vol. 1, pp. 0142–0143, 0145–0146, and 0148–0149; see also the FCC's Informational Sheet on Over-the-Air Reception Devices Rule, First Question and Answer, <http://fcc.gov/mb/facts/otard.html>, and a FCC memorandum on Antenna Tower Lighting and Marking Requirements, <http://www.fcc.gov/mb/policy/dtv/lighting.html>, copies of which are attached hereto as Exhibits 1 and 2 [see Request for Judicial Notice in footnote 1].) FCC regulations pertaining to the size of an antenna, as opposed to its vertical height from the ground or other surface, typically refer to the diameter of the object or a diagonal measurement. (*Id.*) Thus, the Court's suggested interpretation would not be consistent with the other references to height in the City's Zoning Ordinance or the FCC's use of that term." (Fn.omitted.)